

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALPHONSO SCOTT,

Petitioner,

v.

Case No. 12-13245
Honorable David M. Lawson

JEFF WOODS,

Respondent.

ORDER DENYING AS MOOT APPLICATION TO PROCEED *IN FORMA PAUPERIS* ON APPEAL AND MOTION FOR CERTIFICATE OF APPEALABILITY AND DENYING REQUEST TO RAISE A SIGNIFICANT CONSTITUTIONAL CLAIM

On July 27, 2012, the Court granted the petitioner's application to proceed *in forma pauperis*, denied the petitioner's petition for a writ of habeas corpus as untimely, and denied a certificate of appealability. On August 24, 2012, the petitioner filed an application to proceed *in forma pauperis* on appeal, a motion for a certificate of appealability, and a document entitled "Petitioner Submit Addendum Requesting to Raise a Significant Constitutional Claim Thats Related to the Issue Raised in the Habeas Petition." The Court will construe the last document as a motion to amend the petition for a writ of habeas corpus and deny each of the petitioner's requests.

Federal Rule of Appellate Procedure 24 provides that "[a] party who was permitted to proceed *in forma pauperis* in the district-court action . . . may proceed on appeal *in forma pauperis* without further authorization," unless the district court certifies in writing that the party's appeal is not taken in good faith. Fed. R. App. P. 24(a)(3). The Court has made no such finding in this case and the petitioner need not apply to proceed *in forma pauperis* again. Therefore, the Court will deny as moot the petitioner's pending application to proceed *in forma pauperis* on appeal.

On July 27, 2012, the Court entered an opinion and order determining that the petition for a writ of habeas corpus was not filed within the time permitted by 28 U.S.C. § 2244(d) and that the petitioner was not entitled to statutory or equitable tolling of the one-year limitations period. Also on that date, the Court entered an order denying a certificate of appealability, finding that reasonable jurists could not debate whether the petition was filed within the time permitted by 28 U.S.C. § 2244(d) or the petitioner was entitled to statutory or equitable tolling of the one-year limitations period. The petitioner's motion for a certificate of appealability is moot, as the Court has already denied the relief the petitioner seeks. Therefore, the Court will deny the motion as moot.

Further, the petitioner's motion to amend his petition for a writ of habeas corpus must be denied. The petitioner seeks to raise new issues as to the effectiveness of his appellate counsel. A habeas corpus petition may be amended "as provided in the rules of procedure applicable to civil actions." 28 U.S.C. § 2242. A court may deny a motion for leave to amend when the proposed amendment would be futile. *Head v. Jellico Hous. Auth.*, 870 F.2d 1117, 1123 (6th Cir. 1989); *Martin v. Associated Truck Lines, Inc.*, 801 F.2d 246, 248 (6th Cir. 1986); *Neighborhood Dev. Corp. v. Advisory Council on Historic Pres.*, 632 F.2d 21, 23 (6th Cir. 1980). In other words, if the district court concludes that "the pleading as amended could not withstand a motion to dismiss," the court may deny the motion to amend, thereby saving the parties and the court the expense of having to confront a claim doomed to failure from the onset. *Head*, 870 F.2d at 1123 (quoting *Martin*, 801 F.2d at 248). The petitioner's proposed amendments do not address the issue of the timeliness of the petition, and the additional proposed claims also would be untimely. Therefore, the Court will deny the motion to amend because it is futile.

Accordingly, it is **ORDERED** that the petitioner's application to proceed *in forma pauperis* on appeal [dkt. #11] is **DENIED AS MOOT**.

It is further **ORDERED** that the petitioner's motion for a certificate of appealability [dkt. #12] is **DENIED AS MOOT**.

It is further **ORDERED** that the petitioner's request to raise a significant constitutional claim, construed as a motion to amend his petition [dkt. #13] is **DENIED**.

s/ David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: September 6, 2012

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on September 6, 2012.

s/Deborah R. Tofil
DEBORAH R. TOFIL